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## Report on Clients' Indemnity Fund

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and the names of contributors of such funds should not be disclosed to the candidate.

Following the receipt of the opinion of the Ethics Committee by the Board of Governors, the Board passed a further resolution adopting as its position the entire opinion of the Ethics Committee without amendment.

The rules of conduct set forth in the report of the Ethics Committee state that "candidates for judicial office who are not as yet judges should adhere to the principles applicable to incumbent judges."

#### REPORT ON CLIENTS' INDEMNITY FUND

Hilton Gardner

Some years ago the American Bar Association started a study of clients' security funds and appointed a committee known as the Committee on Clients and Security Funds. This committee of the State of Washington had frequently been asked just what is such a fund. Now a clients' security fund is a fund voluntarily established by the bar association for the purpose of reimbursing clients in those few instances in which a lawyer, while the attorney-client relationship existed, has misappropriated his clients' funds.

The American Bar Association committee recommended the establishment of such funds by both state and local bar associations.

At the mid-year meeting of the House of Delegates of the American Bar Association that recommendation was approved. It was done in the belief that the public looks to the bar to keep its own house in order and that when one lawyer misappropriates clients' funds under the conditions which I mentioned, it blackens the reputation of the entire profession.

Now as a matter of fact, most of the rest of the English-speaking world has had these funds for many years. The whole of the British Isles, six of the Canadian provinces, New Zealand, Australia, the Union of South Africa and others have had them in successful operation for a good many years.

The committee of which I am a member and of which Mr. Wesley Miffin of Seattle was chairman, made a study of these various plans that have been in operation throughout other countries and one that had been adopted by the State Bar Association of Vermont and one that was proposed to be adopted and actually passed the State Bar

Association of Oregon but is now tied up in the legislature because they needed the aid of a legislative act in order to put it into effect.

As a result of that study this committee came up with certain recommendations. One was that a client security fund be created by the Washington State Bar Association. Another one was that in order to provide an adequate fund to take care of such losses as might occur within a year, it be created by the obtaining of insurance insuring the bar against losses which it might sustain, payable out of this fund; and that there be a ceiling of \$10,000 liability as to each lawyer, \$5,000 liability as to each claim.

It was recommended too that that policy be payable only to the bar association and that there be no direct right of action by any member of the public or any claimant against the bar.

That may seem a little bit strange to those who hear it in the first place, but it has been found the most effective working way for the administration of the fund where these funds have been in existence. One reason is that it helps to reduce the number of claims. It assures that an effort will be made to collect from the attorney before looking to any fund.

Now we have made an investigation as to whether such insurance could be obtained, because some of the local associations who have tried to get insurance throughout the country have met with the response that there is no history upon which to act and that the companies are reluctant to quote rates.

But we have been quoted a rate and furnished a form of policy which we tentatively approved, which would require the payment of a premium of \$5.25 per lawyer per year, and which would provide coverage within the limits mentioned, that is liability of \$10,000 with the lawyer, \$5,000 per claim, and that the premium be a yearly one.

There was another recommendation to the effect that no payment be made until a complaint had been filed against the lawyer in the regular manner and that the state bar association had recommended disciplinary action to the supreme court.

Now many states in their studies and in their proposals have provided that the lawyer actually be disbarred or that the action be taken prior to payment. We on the committee felt that if the action had been recommended by the Board of Governors to the supreme court, that that in itself should be a sufficient safeguard, because experience, I think, would show that in those cases where such action has taken

place, if it were a case of misappropriation, and that is the only instance this could come about, the lawyer himself would cooperate toward the reimbursement to his client.

In order to put this fund into effect we further recommended that the plan be administered through a committee appointed by the Board of Governors and that it be administered by them rather than by the insurance company. That is consistent with our theory that the policy should be payable to the bar itself and that only those claims will be paid which the bar association, having investigated, feels are worthy.

Now in order to stand the cost of it, we further recommended that there be a yearly assessment of approximately \$5.00 against each member of the bar.

I move the adoption of the report.

[Whereupon, the motion was seconded.]

MR. ROBERT WELLS: I wish to say just a word in support of this resolution. Some eight years ago, I think it was, when I chanced to be your president, one of the two affirmative recommendations contained in my report was this particular proposal. The matter was lost. It now comes to light. I want to give you very briefly the highlights of my own belief and reasoning. They may be a little different than the things the committee has presented to you.

After some forty-five years of experience and having tried a few jury cases, I believe that your trial lawyers will agree with me that what the layman wants to know is, is the man, the lawyer, honest? Can I get from him a straight deal? The fact he is a lawyer carries with it the assumption that he is able to perform his trade properly, so to speak. But we don't realize that the layman's thinking gets right down to essentials. Is he honest? Can I get a square deal? And your trial lawyers will tell you, I'm quite sure, unless they are speaking facetiously, that the same is true of the jury. One of the most essential things beyond convincing them that your client is right and in connection with it is, can I trust the word of the fellow who is talking to me? Is he fooling or is he giving me a square deal?

Now Joe Gordon will tell you, or has told you, many times of his experiences. The Washington State Bar Association, our state, stands high nationally as an integrated bar and in performing its functions. Those of you who have been on the Board of Governors and have been fortunate enough to serve as presidents, know that we have the excellent program adopted to patrolling and policing of our own mem-

bership. The adjunct to that in my own mind is that we should have this protective fund. Surely only once in a rare instance does it happen, but I think the layman is entitled to that protection. I think that we should let the layman know that the concepts obtained through television, through radio, through press reports, where the unethical conduct of a lawyer in the drama is magnified to the point where the layman thinks in terms of a lawyer being someone who in some corrupt, crooked or simply smart way defeats the administration of justice, are false and that we can capitalize on the fact that we police our own membership and if there is a complaint by the layman, there is remedy. Second, if, unfortunately, one of our members does take another's money, we as lawyers of the association respond and pay it. It fits in with the theory that while we know of ourselves, the layman refuses to recognize it unless he has had personal knowledge, that actually the man who is practicing law, who represents a client, is a man of high integrity; he is honest, he will see in what he says and in what he does that justice is administered and a square deal is had by the layman.

I think our opportunity is here to supplement our patrolling and policing of ourselves with an indemnity fund costing us little for the protection of the layman.

MR. ELIAS WRIGHT: Have you heard of any of these lawyers who stole their clients' money being prosecuted criminally at the instance of the bar association? Tell me of one. They should be in Walla Walla. That is where they belong the same as any other thief. And for us members of the bar, to go out and pay the peculations is abhorrent to me. Prosecute them and the public knows we are cleaning the bar association by sending them to the penitentiary where they belong. Then the public will begin to have confidence in you. They will know you are going to clean the bar of these rascals. That is the way to get the confidence of the public.

I notice Mr. Gardner and I want to compliment Mr. Gardner. I noticed the reading of the resolution. It says that no money shall be paid until the matter is reported to the bar association, to the bar. It didn't say reported to the prosecuting attorney and prosecution had. No.

Gentlemen, you have had my opinion.

PRESIDENT O'LEARY: I think we all should bear in mind that it isn't the duty of the Board of Governors to go out and start criminal complaints, criminal proceedings. That isn't their duty any more than it

is the duty of any citizen in the land. It is the duty and jurisdiction of the board merely to handle disciplinary matters. They don't have any other jurisdiction over offenses committed by lawyers or anyone else. Their entire jurisdiction is to proceed against any lawyer on what arises solely out of the Disciplinary Board.

MR. W. G. McLAREN: Members of the convention, I have been impressed by the presentation of this very carefully prepared committee report. I have this question in mind on which I am in serious doubt, and that is: should not another condition provision to the liability on the bond be inserted, namely that not only should the Board of Governors have considered and recommended disbarment, but also that an actual disbarment should have been completed? I have in mind the remark made by my brother Elias Wright. Sometimes the Court may become too lenient after the man has misappropriated the money. The question I have in mind based upon my own experience is the question as to what was the reason why the committee and why the other sources of information upon which it lies dependent saw fit not to include that additional condition? If that condition were in I should be very much inclined to support the resolution.

MR. HILTON GARDNER: To take up Mr. McLaren's objection first, it will be noticed that payment by the bar association of a claim is wholly at the discretion of the bar association, whether they can take care of worthy cases. Naturally it will be expected that some recourse will be had against the attorney to the extent of his resources.

Now it was felt that we should not have to await a disbarment if the facts are so clear as, for instance, an attorney may confess the charge. Why then, if it were a worthy case, one that the bar association would otherwise pay if the man were disbarred, should that client have to await that action which might take eighteen months or so, to be accomplished?

Now there is one other fact to which we gave consideration, and that is as to why we did not recommend that the fund be created by the assessment of a \$5.00 raise in dues against the members, and that we hold that money and pay claims from it.

I can only briefly state that that was carefully considered. We are in possession, or felt that we were in possession of facts, which makes that unwise. It is true that if this action were placed into effect shortly that only those claims thereafter occurring could be considered. But situations have occurred, perhaps not public knowledge yet, but in

the past, have shown that this entire fund, if created in that manner, would be dissipated within a year. We feel that should do it by the process of insurance until such time as a fund has been created which will either take care of amounts in excess of the liability amounts that I mention, or pay the whole.

[Whereupon, the motion was voted upon by standing vote and carried.]

Mr. Jack Whitmore of Seattle reported for the Committee on Insurance. The report of the Board of Trustees of the Bar Foundation was delivered by Mr. DeWitt Williams of Seattle. The association delegate to the House of Delegates of the American Bar Association, Mr. Joseph Gordon of Tacoma, reported on the meeting of the American Bar Association in Miami, Florida, held on August 18-28. Mr. Elias Wright of Seattle delivered the memorial address in honor of members of the association who passed away during the year. The list of members so memorialized appears on a subsequent page.

#### REPORT OF RESOLUTIONS COMMITTEE

John S. Moore, Chairman

The first proposal that we submit is as follows:

WHEREAS, for the success of this 1959 convention the Washington Bar Association is deeply indebted to many individuals and organizations to whom we wish to express our appreciation. Now therefore,

BE IT RESOLVED that this Association hereby expresses its sincere appreciation and thanks to the officers and members of the Spokane Bar Association, the Women's Auxiliary of the Spokane Bar Association, the people of the City of Spokane and all other parties and persons unknown who labored so diligently and successfully in making the 1959 convention so outstanding and enjoyable.

BE IT FURTHER RESOLVED that the Association particularly thanks the ladies in Spokane who have royally entertained our visiting wives during this convention.

BE IT FURTHER RESOLVED that the Association extends its gratitude and appreciation to our visiting colleagues, the Honorable John E. Murray, the Honorable John D. Randall and the Honorable Walter S. Owen, who have contributed to much to the success of this convention.